



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

BCS/159924

PRELIMINARY RECITALS

Pursuant to a petition filed August 18, 2014, under Wis. Stat. §49.45(5)(a), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), the matter was set for a hearing on September 4, 2014, but the matter was continued to October 7 so that the agency could prepare for the correct reason for the appeal and to allow time for the parties to attempt resolution of the matter. No resolution occurred and a telephonic hearing was held on October 07, 2014. The record was held open 7 days post-hearing to allow petitioner time to submit additional information, which was received within the allotted time.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On February 17, 2014, the county agency sent a written notice of negative action to the petitioner and to her authorized representative at their mailing addresses of record.
3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on August 18, 2014.
4. The negative action in this case was the termination of BadgerCare Plus (BCP) benefits effective March 1, 2014 for Xin, Winson and Bosco due to nonpayment of a premium.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within 45 days of the date of the action. Wisconsin Stat. §49.45(5); Income Maintenance Manual §3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 182 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

I add that petitioner's case ultimately centered around the fact that the authorized representative claimed that neither she nor the petitioner received the notice terminating the BCP. The agency produced the notices mailed to each of them. The agency's representative testified that petitioner's notice was mailed to the authorized representative's address because that was what the agency had on record for petitioner's mailing address, even if it was not her physical address. The agency's representative also testified that petitioner's notices had been mailed in the same fashion for the past 2 years to those addresses of record. The hearing record was held open to allow the authorized representative an opportunity to show that petitioner had received notices at her physical address in the past, but no such evidence was provided. Accordingly, the preponderance of the evidence shows that the agency mailed its notices properly, but that the appeal of those notices was filed too late.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 18th day of November, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 18, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability